

# Aeronautical Systems Center

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**ASC Small Business Office**  
**23 May 2006**

**U.S. AIR FORCE**

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# Items of Interest



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- **Size Recertification**
- **Limitation on Subcontracting**
- **Teaming**
- **Source Selection of Small Business Participation**
- **Role of the Small Business Office**
- **Questions**





# Size Recertification



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- **Should SBs recertify size at time of issuance of orders under multiple award ID/IQs?**
  - SBs grow to be LB under large MAC ID/IQs
  - Historically, a SB was considered small for the life of the ID/IQ contract; recent rulings have allowed recertification at time of order issuance
- **Recent Case at OO-ALC**
  - Original MAC ID/IQ awarded 2001 (5SB, 6 LB, 15-year contract)
  - SBSA in 2005; asked companies to recertify
  - SB did not recertify; used original certification of SB status
  - Hill CO appealed to SBA
    - SBA Philadelphia: size status is small based on original cert
    - SBA OHA overturned; SB not small for this procurement
  - Hill awarded to next low acceptable SB
  - SB protested award; sought injunctive relief
  - U. S. Court of Claims Ruling
    - AF within rights to recertify
    - Agreed with SBA OHA: underlying contract is framework for future competition for contracts
    - Task order constitutes new procurement
- **Concern: if no policy exists, no consistency concerning recertification among various buying offices**



# Size Recertification



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- **Current Regulations**

- **13 CFR 124.503(h) - re: 8(a) Program:**

“Unlike Basic Ordering Agreements, Multiple Award and FSS contracts are contracts. Orders issued under these contracts are not considered separate contracts.” Subpara (2): “A concern may continue to accept new orders under a MA or FSS contract even where...the concern becomes other than small for the SIC code assigned under the contract subsequent to award of the contract.”

- **13 CFR 121.404**

Subpara (a) SBA determines the size status as of the date the concern submits a written self-certification that it is small as part of its initial offer which includes price.

Subpara (g) A concern that qualified as a SB at the time it receives a contract is considered a SB throughout the life of that contract.



# Size Recertification



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- **Recent Rulings**
  - SBA OHA (SIZ-4477, SETA Corp and FEMA, March 2002)
    - RFQ issued against GSA FSS
    - RFQ is a new procurement; RFQ is correct time to establish size
  - GAO Case (CMS Info Systems, 7 Aug 02, B-290541)
    - SB awards must actually be performed by SBs
    - COs have right to require recertification at time of order under competitive SBSA RFQs against GSA MASs
  - SBA OHA (SIZ-2003-11-25-71, Advanced Mgmt Tech, Jun 04)
    - Offerors must be small as of date of proposal/quote at order level
- **SBA Proposed Rule RIN 3245-AF06, 25 Apr 03**
  - Address time at which size is determined for FSS, MACs, GWACs
  - Proposed to amend CFR to require annual recertification
  - AFMC/PK position: disagreed (SB impacts/increase workloads)
  - Current status: at OMB; no date for publication



# Size Recertification



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- **Implications**

- Big impact on SB awards, particularly in today's acquisition environment of long-term, broad-scoped MACs
  - Example: Commodity Councils – a large award to a SB will cause it to quickly grow out of SB status; all awards will then be going to LB
- No current rules/guidance, except
  - Joint letter between SAF/AQC and SAF/SB, signed 10 May 06
    - Recent ruling regarding COs requiring SB recertification on delivery orders
      - » Not interpreted as a precedence, but proposition that under appropriate circumstances, the CO retains the discretion to request recertification before award of a delivery order, task order or the exercise of an option

- **Recommendation**

- Issue policy that acquisition strategy, as well as resulting RFP and DD Form 2579, should include guidelines/rules for recertification based on what makes sense for that specific acquisition



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# Limitation on Subcontracting



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- **Services = 50% of personnel costs in house**
- **Manufacturing = 50% of cost of production (excl material) in house**
- **Gen construction = 15% of cost of contract (excl materials) in house**
- **Special trade construction = 25% of cost of contract (excl materials) in house**

Ref: FAR 52.219-14



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# Limitation on Subcontracting



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## **SBSA, 8a competitive, 8a sole source**

- **Cooperative efforts of small prime and small 1<sup>st</sup> tier subs**

## **HUBZone, SDVOSB**

- **Small 1<sup>st</sup> tier subs must be HUBZone or SDVOSB**



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# Why Team?



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- **Enables firms to complement each other's capabilities**
- **Enables firms to offer the best combination of performance, cost & delivery**
- **Enables SBs to effectively compete for larger scale requirements**





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# Types of Business Relationships



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- **Prime/Subcontractor Relationship**
  - Prime is responsible for contract performance
  - Government has privity of contract only with the prime
  - Relationships normally identified before offer is submitted
- **Joint Ventures**
  - Contract in Joint Venture's name
  - Contract performance responsibility lies with Joint Venture
  - Agreement must include sharing profit/losses proportionate to each party's contributions to business operations

# Selecting Teaming Partners

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- **Compatible contractors**
- **Teaming agreement**
  - All must understand terms and conditions of agreement
- **Assess team member capabilities**
  - Business, financial, other resources
- **Assess team member past performance**
- **Assess legal constraints**
  - Organizational conflicts of interest
  - Debarments/suspensions
  - Qualification requirements
- **Assess team chemistry**
  - Management styles, corporate cultures, strategic visions





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# Teaming Benefits



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- **Teaming can expand opportunities**
- **Teaming can be a winning situation for all parties**

**Coming Together is Beginning,  
Keeping Together is Progress,  
Working Together is Success  
- Henry Ford -**





# Evaluating SB Participation



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- **Issue: How to evaluate a potential prime contractor's SB (or socioeconomic) program**
  - Developing a evaluation factor
  - Developing a meaningful metric
  - Evaluating performance (post award)
  
- **Considerations/Challenges/Obstacles:**
  - Different types of bidders (e.g. SB, LB, non-profit)
  - Different types of subcontracting plans
    - Individual Plan
    - Commercial Plan
    - Comprehensive Test Plan



# Evaluating SB Participation



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- **Two principal areas of consideration:**
  - **Past Performance**
  - **Prospective Performance (what happens if I am awarded the contract)**
- **Special Factors / areas of consideration:**
  - **SDB participation**
  - **Bundling**



# Evaluating SB Participation – PAST PERFORMANCE



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- **DFARS 215.305(a)(2) – Past performance evaluation --- Evaluation factors shall include:**
  - **52.219-8, Utilization of SB, SDB, WOSB, compliance**
    - *(maximum practicable opportunity)*
  - **52.219-9, SB, SDB, WOSB Subcontracting Plan, compliance**



# Evaluating SB Participation PROSPECTIVE PROGRAM

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- **DFARS 215.304 – Evaluation Factors & Significant Subfactors**
  - (c)(i) In acq. that require 52.219-9 (subcontracting plan), extent of SB participation **SHALL** be addressed in source selection.
  - CO **SHALL** evaluate the extend to which offerors identify & commit to SB in contract performance ...

*DFARS 215.304*  
*Guidance –*  
*Be creative!*  
*Think it through!*  
*Common Sense Approach*



# Evaluating SB Participation – PAST PERFORMANCE

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- **FAR15.304 – Evaluation Factors & Significant Subfactors**
  - (c)(3)(i).... **Past performance *SHALL*** be evaluated in all source selections for negotiated competitive acquisitions expected to exceed \$1M
- **FAR15.305(a) – Proposal Evaluation --- Past Performance Evaluation**
  - (2)(v) The evaluation should include the past performance of offerors in complying with subcontracting plan goals for SDB ...



# Evaluating SB Participation PROSPECTIVE PROGRAM

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- **DFARS 215.304 – Evaluation Factors & Significant Subfactors (continued)**
- (A) Evaluation factors **MAY** include – (*among other things*)
  - Extent SB are identified in proposals
  - Extent of commitment to use SB
  - Complexity & variety of work SB will perform
    - - **Past performance** in complying with 52.219-8 and -9
    - - Participation in terms of **total acquisition value**
- (B) Proposals addressing the extent of SB performance **may be separate from subcontracting plans** (FAR 52.219-9) and should be structured to allow for consideration from SB.



# Evaluating SB Participation PROSPECTIVE PROGRAM

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- **ONE SIZE DOES NOT FIT ALL !**

## Typical Scenarios –

- **Sole Source** (Comprehensive plan participant)
- **Full and Open** (Market Research - only Comprehensive plan participants)
- **Full and Open** (Market Research – only LB)
- **Full and Open** (Market Research – various types)



# Evaluating SB Participation PROSPECTIVE PROGRAM

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## – Key Questions –

- Market Research
- What makes sense for the particular acquisition?
- What are we trying to evaluate?
- Discriminators
- Factor
  - » **Metric**
  - » **Post Award**
  - » **Past Performance**



# Role of the Small Business Office



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- **Duties and Responsibilities**
  - Aid, assist and counsel small business
  - Enhance small business participation in acquisitions
  - Assist in conducting market research
  - Review/coordinate on internal documents
    - Subcontracting Plans, Acquisition Plans, etc.
  - Manage our outreach program

*The Small Business Office is the first stop for all small businesses who are interested in doing business with Wright-Patterson Air Force Base*





# Small Business Office Contacts



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# QUESTIONS

